

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
January 22, 2015

In re A. SANDERS, Minor.

No. 320933
Kent Circuit Court
Family Division
LC No. 10-051159-NA

Before: RIORDAN, P.J., and MARKEY and WILDER, JJ.

PER CURIAM.

Respondent mother appeals as of right the trial court order terminating her parental rights to the minor child (born in 1996) under MCL 712A.19b(3)(a)(ii) (parent has deserted the child for 91 or more days), (c)(i) (conditions of adjudication continue to exist), and (g) (failure to provide proper care or custody). We affirm.

I. STATUTORY GROUNDS

A. STANDARD OF REVIEW

Respondent first contends that the trial court clearly erred in finding clear and convincing evidence of the statutory grounds for termination. We review for clear error a trial court's finding that a statutory ground for termination was proven by clear and convincing evidence. *In re B & J*, 279 Mich App 12, 17; 756 NW2d 234 (2008). "A decision is clearly erroneous when, although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been made." *Id.* at 17-18 (quotation marks and citation omitted).

B. ANALYSIS

MCL 712A.19b(3)(g) provides for termination when: "The parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age."

When the minor was seven years old, she reported to being sexually abused on two separate occasions by two different men: her father and an acquaintance of her parents. The minor was removed from their care and placed in a guardianship with her aunt in 2005. At the

initiation of the instant proceedings in 2010, respondent had no contact with the minor since 2005. Respondent had maintained her relationship with the minor's father, although it appeared to be intermittent. Even during these proceedings, respondent failed to address, and most times did not even admit, that the minor's father had sexually abused the minor while in respondent's care. Respondent showed no appreciation of her role in failing to protect the minor from such abuse. Nor did she display any sustained interest in participating in services. See *In re JK*, 468 Mich 202, 214; 661 NW2d 216 (2003) ("This Court has held that a parent's failure to comply with the parent-agency agreement is evidence of a parent's failure to provide proper care and custody for the child."). In light of the foregoing, we find no error in the trial court's finding that respondent failed to provide proper care or custody of the minor. MCL 712A.19b(3)(g).

The trial court also properly concluded that respondent would not be able to provide proper care and custody of the minor within a reasonable time considering the minor's age. Respondent demonstrated a complete lack of commitment to regaining custody of the minor throughout the proceedings. Respondent periodically contacted petitioner to assert her decision to not participate in services. She displayed a general apathy during these proceedings, evident in her failure to participate in any significant services such as parenting classes and her unavailability when petitioner would contact her. In essence, respondent failed to make any strides toward regaining custody of the minor. At the time of termination hearing, the minor was 17 years old. She had displayed significant behavioral problems, and would require continued support because of her cognitive limitations. For almost all of the proceedings, the minor reported that she did not want contact with respondent and would frequently display anxiety or fear at the prospect of visitation with respondent. Given respondent's history, her lack of compliance with the service plan, and the minor's special needs, the trial court properly found that there was no reasonable likelihood that respondent would be able to provide proper care and custody of the minor within a reasonable time considering the minor's age. MCL 712A.19b(3)(g).

Respondent, however, contends that termination was improper because after the permanency planning goal was changed to adoption, she was not offered timely reunification services. Respondent concludes that the trial court was unable to determine whether she would be able to provide proper care and custody of the minor within a reasonable time. Respondent's argument is without merit.

"When a child is removed from a parent's custody, the agency charged with the care of the child is required to report to the trial court the efforts made to rectify the conditions that led to the removal of the child." *In re Plump*, 294 Mich App 270, 272; 817 NW2d 119 (2011). "The adequacy of the petitioner's efforts to provide services may bear on whether there is sufficient evidence to terminate a parent's rights." *In re Rood*, 483 Mich 73, 89; 763 NW2d 587 (2009). However, "[w]hile the DHS has a responsibility to expend reasonable efforts to provide services to secure reunification, there exists a commensurate responsibility on the part of respondents to participate in the services that are offered." *In re Frey*, 297 Mich App 242, 248; 824 NW2d 569 (2012).

Respondent was afforded reasonable services throughout the entire, lengthy proceeding. After the minor entered care for the second time in April 2010, the trial court instructed that reasonable efforts should be made to facilitate reunification. The recommended services

included a psychological evaluation, parenting classes, counseling, drug testing, and substance abuse services. As of June 4, 2010, respondent only completed one drug screen and submitted to the psychological evaluation. Sometime after June 4, 2010, respondent reported that she did not want to participate in services. After September 8, 2010, respondent changed her mind and reported that she wanted to participate in services again; she was referred to a parenting class scheduled to begin in October 2010. Respondent failed to attend. Respondent did not attend the December 15, 2010 permanency planning hearing, and the trial court adopted a permanency planning goal of adoption.

In March 2011, respondent changed her mind again, and reported that she wanted to participate in services. The permanency planning goal was changed to Another Planned Permanent Living Arrangement (APPLA), but respondent was told that it could be changed to reunification at a later date if she made progress in services. Respondent was referred to a parenting class, but completed less than half of them. She also was instructed to complete a substance abuse assessment, which she failed to attend. Although respondent was aware that she could not participate in reunification services if she was living with father, respondent reunited with father in August 2011.

In September 2011, respondent again changed her mind and decided that she wanted to end her relationship with father. She did not want to participate in services, but wanted to see the minor. Respondent then separated with father, and stated that she was interested in participating in services. Even so, she failed to attend a mental health evaluation in November 2011. As of June 2012, respondent had divorced the minor's father, and now believed the minor's 2003 allegations of sexual abuse. While respondent had expressed her desire to have contact with the minor, the minor was unwilling. When the caseworker called respondent, the phone was not in service. In October 2013, respondent reported that she was unwilling to participate in services.

In November and December 2013, respondent could not be reached by telephone and did not return the caseworker's telephone calls. Respondent failed to return intake paperwork that was mailed to her. In February 2014, respondent was mailed a service plan, and expressed her opposition to adoption. While the caseworker had doubts about respondent's ability to understand what was happening, the caseworker explained the purpose of the proceedings to respondent several times and helped respondent with several questions. Despite the caseworker's assistance, respondent failed to return the completed paperwork before the termination hearing was held.

Thus, respondent was offered services during the almost four-year proceedings, even when the permanency planning goal was not reunification. Respondent displayed next to no interest in genuinely participating in any services, and repeatedly contacted caseworkers to inform them of her refusal. At various points throughout these proceedings, respondent maintained her relationship with the minor's father—who had sexually assaulted the minor—despite knowing that such a circumstance was a barrier to reunification and services. Respondent did not complete parenting classes, nor a substance abuse assessment. She failed to maintain consistent contact with petitioner, and calls and mail sent to her often went unanswered. Respondent cites no support for her position that, despite her repeated refusals to participate in services, petitioner was somehow at fault. See *In re Frey*, 297 Mich App at 248. Respondent has not demonstrated error requiring reversal.

Because “[i]t is only necessary for the DHS to establish by clear and convincing evidence the existence of one statutory ground to support the order for termination of parental rights,” we decline to address the alternate grounds for termination. *In re Frey*, 297 Mich App at 244.

II. BEST INTERESTS

A. STANDARD OF REVIEW

Respondent next contends that the trial court improperly determined that termination was in the child’s best interests. We review for clear error a trial court’s decision regarding a child’s best interests. *In re Rood*, 483 Mich 73, 90; 763 NW2d 587 (2009). “A finding is clearly erroneous if although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been made.” *Id.* (quotation marks, citations, and brackets omitted).

B. ANALYSIS

“In deciding whether termination is in the child’s best interests, the court may consider the child’s bond to the parent, the parent’s parenting ability, the child’s need for permanency, stability, and finality, and the advantages of a foster home over the parent’s home.” *In re Olive/Metts Minors*, 297 Mich App 35, 41-42; 823 NW2d 144 (2012) (internal citations omitted).

The record does not support that respondent and the child were bonded. The child entered care when she was seven years old, was placed in a guardianship in 2005, and thereafter considered her guardian to be her mother for numerous years. When the child entered care for a second time in 2010, respondent had no contact with her since 2005. Although respondent represented that she wanted contact with the child, she was unwilling to participate in services. The minor repeatedly reported that she did not want contact with respondent. The minor later agreed to a few supervised visits, but decided that she did not wish to continue contact with respondent. At the time of the termination hearing, the minor considered her foster parent to be her mother, and she had expressed a “strong desire” to be adopted by the foster mother.

Although respondent contends that the minor’s cognitive limitations rendered her unable to understand what adoption entailed, the record demonstrates other reasons that weighed in favor of termination. The minor was in need of consistency and stability. She had been in care twice during her life and had reported to being sexually assaulted by two different men, one being her father, during her early childhood. Even though the minor was nearly 18 years old at the time of termination, because of her cognitive limitations, she would need continued support after she reached adulthood. The foster mother was willing to adopt the child and provide her with the stability and consistency that she needed, which respondent could not provide given her total lack of commitment to the child. *In re Olive/Metts*, 297 Mich App at 41-42. Further, the minor “badly” wanted to be a part of the foster family, and deserved permanency and stability. The trial court did not clearly err in finding that termination of respondent’s parental rights was in the children’s best interests. *In re Rood*, 483 Mich at 90.

III. CONCLUSION

The trial court properly found clear and convincing evidence of the statutory grounds for termination, MCL 712A.19b(3)(g), and that termination was in the child's best interest. We affirm.

/s/ Michael J. Riordan

/s/ Jane E. Markey

/s/ Kurtis T. Wilder